IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

AT JODHPUR

J U D G M E N T

Chandu Ram & ors. Vs. State of Rajasthan

D.B.CRIMINAL APPEAL NO.508/1999
against the judgment dt.20.8.1999 passed by
the Addl.Sessions Judge, Anupgarh,
in Sessions Case No.99/1998.

Date of Judgment: Dec.03, 2007

P R E S E N T

HON'BLE MR.JUSTICE BHAGWATI PRASAD
HON'BLE MR.JUSTICE DEO NARAYAN THANVI

Mr.D.K.Gaur, for appellants.
Mr.J.P.S.Choudhary, Public Prosecutor.
Mr.Digvijay Singh for Mr.H.S.S.Kharlia, for complainant.

BY THE COURT: (PER THANVI J.)

1. This appeal is directed against the judgment of the learned Additional Sessions Judge, Anupgarh, dated 20.8.1999, whereby he convicted all the four accused appellants for the offences under sections 302 & in alternative 302 read with Sec.34, Sec.436 & in alternative Sec.436 read with Sec.34 and Sec.447

IPC and sentenced each one of them to undergo life imprisonment and a fine of Rs.200/- & in default, to further undergo six months' R.I. for the offence u/s.302 & in alternative Sec.302 read with Sec.34 IPC; two years' R.I. and a fine of Rs.200/- & in default, to further undergo six months' R.I. for the offence u/s.436 & in alternative Sec.436 read with Sec.34 IPC; and one month's R.I. for the offence u/s.447 IPC. All the sentences were ordered to run concurrently.

2. The facts leading to this appeal are that one oral F.I.R. was lodged by Devilal on 21.11.1997 at 6 P.M. at Police Station, Anupgarh that in Murabba No.56/6 of Chak 3 P.M., his father and accused Chandu Ram jointly purchased 25 bighas of land four years back for a sum of Rs.3 lacs. He cultivated his share but Chandu Ram did not cultivate and he wanted to grab his land. He was also having the land adjacent to it, where they were residing. In the morning, when his brother Amilal went to the field, all the four accused got down from the tractor. Accused appellant Mahesh Kumar was having `Gandasi' in his hand and rest were with `lathis'. All the four accused started beating to Amilal, who fell down. Mahaveer also reached on the spot. When he started shouting, accused Chandu Ram lit fire in the hut and thereafter all the four accused appellants ran away. Amilal was taken to the hospital, where he died. Upon this report, police

registered a case and filed challan against the accused appellants before the court of judicial magistrate, who committed the case to the court of Sessions. Learned Addl.Sessions Judge framed charges against the accused appellants u/ss.302, 447 & 436 read with 34 IPC to which they pleaded not guilty. The prosecution examined 16 witnesses. The statements of accused were recorded u/s 313 CrPC. They produced one Mani Ram (DW 1) in their defence. After hearing, learned trial Judge convicted & sentenced the accused appellants as aforesaid.

3. Learned counsel for the accused appellants has submitted that during the pendency of the appeal, principal accused Chandu Ram expired and appeal against him, has been abated by the order of this Court dated 22.1.2001. According to him, the accused are labourers. They were having joint possession over the field and there was no motive or intention on the part of the accused to kill deceased Amilal. Whatever fight took place, it was at the spur of the moment and on account of cultivation. With regard to injuries on the person of deceased, doctor has also opined that no `gandasi' or any sharp edged weapon was used in inflicting injuries. It is also not clear as to who inflicted the injury, which was sufficient in the ordinary course of nature to have caused death. In all, there are seven injuries, out of which one is bruise and another is abrasion. Learned trial Judge

has also disbelieved the theory of continuous blows with the sharp & blunt edged objects for a period of 15 to 20 minutes by the accused appellants. They have already undergone the sentence for a period of about five years, therefore, the lenient view should be taken.

4. Per contra, learned Public Prosecutor has supported the judgment of the learned trial Judge.

5. We have re-appreciated the evidence on record. It is true that all the four accused persons came on spot, which was a field, jointly purchased by deceased and accused Chandu Ram. The motive to kill the deceased has also not come out. Devilal (PW 1), who is the first informant of the case, has not stated any motive to kill deceased Amilal, except that the land was jointly purchased by deceased and accused appellant Chandu Ram. Same is the evidence of Mahaveer (PW 2). If the testimony of these eye witnesses is read in the light of the medical evidence, it is clear that the head injury was sufficient in the ordinary course of nature to have caused death, but no intention or motive on the part of the accused is reflected that they wanted to kill deceased Amilal, as they all were having blunt weapons in their hands and there are, in all, seven injuries on the person of deceased, out of which, one is bruise and other is abrasion. It is

also not clear, as has been held by the learned trial Judge, as to who inflicted head injury in the absence of which, necessary inference which can be drawn from the evidence on record is that there was no intention on the part of the accused to kill deceased but they had the knowledge that inflicting lathi blows may likely to cause death and this likelihood of causing death falls under the Category of Part II of Section 304 IPC, which is culpable homicide not amounting to murder.

6. Since one of the accused appellants has expired, who was the principal accused of the case and rest of the appellants have undergone sufficient period of sentence, therefore, the ends of justice will meet, if they are sentenced to the period already undergone. Out of the remaining three accused appellants, accused appellant Mahesh Kumar was arrested on 24.11.1997 and he was released on bail by the order of this Court dated 24.2.1998 and after conviction, he was again taken into custody on 20.8.1999 and was released on bail in the appeal, when his sentence was suspended on 21.1.1999. Accused Narayan Singh was arrested on 24.11.1997 and released on 11.2.1999 during trial. He was taken into custody on 20.8.99 when the judgment was pronounced and his sentence was suspended on 22.10.2003 during appeal by the order of this Court. Likewise, accused appellant Sri Ram remained in custody during trial from

24.11.1997 to 11.1.1999 and was taken into custody on 20.8.99 and his sentence was suspended on 11.11.2003 during appeal by the order of this Court.

7. Accordingly, this appeal is partly allowed. While maintaining the conviction of the accused appellants recorded by the Additional Sessions Judge, Anupgarh, vide his judgment dated 20.8.1999, for the offences u/ss.302 & in alternative 302 read with 34, 436 & in alternative 436 read with 34 and 447 IPC, they are sentenced to the period already undergone. However, the sentence of fine shall remain as it is.

(DEO NARAYAN THANVI), J. **(BHAGWATI PRASAD), J.**

RANKAWAT JK, PS